

Secretary shall issue regulations to carry out this section.”

#### PILOT PROGRAM FOR UNIFORM AUDIT PROCEDURES

Pub. L. 102-240, title I, §1092, Dec. 18, 1991, 105 Stat. 2024, directed Secretary to establish pilot program to include no more than 10 States under which any contract or subcontract awarded in accordance with subsec. (b)(2)(A) of this section was to be performed and audited in compliance with cost principles contained in Federal acquisition regulations of part 41 of title 48 of Code of Federal Regulations, provided for indirect cost rates in lieu of performing audits, and required each State participating in pilot program to report to Secretary not later than 3 years after Dec. 18, 1991, on results of program, prior to repeal by Pub. L. 104-59, title III, §307(b), Nov. 28, 1995, 109 Stat. 582. See subsec. (b)(2)(C) to (F) of this section.

#### EVALUATION OF STATE PROCUREMENT PRACTICES

Pub. L. 102-240, title VI, §6014, Dec. 18, 1991, 105 Stat. 2181, directed Secretary to conduct a study to evaluate whether or not current procurement practices of State departments and agencies were adequate to ensure that highway and transit systems were designed, constructed, and maintained so as to achieve a high quality for such systems at the lowest overall cost and, not later than 2 years after Dec. 18, 1991, to transmit to Congress a report on the results of the study, together with an assessment of the need for establishing a national policy on transportation quality assurance and recommendations for appropriate legislative and administrative actions.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 210 of this title.

### § 113. Prevailing rate of wage

(a) The Secretary shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors on the construction work performed on highway projects on the Federal-aid highways authorized under the highway laws providing for the expenditure of Federal funds upon the Federal-aid systems, shall be paid wages at rates not less than those prevailing on the same type of work on similar construction in the immediate locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931, known as the Davis-Bacon Act (40 U.S.C. 276a).

(b) In carrying out the duties of subsection (a) of this section, the Secretary of Labor shall consult with the highway department of the State in which a project on any of the Federal-aid systems is to be performed. After giving due regard to the information thus obtained, he shall make a predetermination of the minimum wages to be paid laborers and mechanics in accordance with the provisions of subsection (a) of this section which shall be set out in each project advertisement for bids and in each bid proposal form and shall be made a part of the contract covering the project.

(c) The provisions of the section shall not be applicable to employment pursuant to apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting equal employment opportunity in connection with Federal-aid highway construction programs.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 895; Pub. L. 90-495, §12(a), Aug. 23, 1968, 82 Stat. 821; Pub. L.

97-424, title I, §149, Jan. 6, 1983, 96 Stat. 2131; Pub. L. 100-17, title I, §133(b)(5), Apr. 2, 1987, 101 Stat. 171; Pub. L. 102-240, title I, §1006(g)(2), Dec. 18, 1991, 105 Stat. 1927.)

#### REFERENCES IN TEXT

Act of March 3, 1931, known as the Davis-Bacon Act (40 U.S.C. 276a), referred to in subsec. (a), is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables.

#### AMENDMENTS

1991—Subsec. (a). Pub. L. 102-240, which directed substitution of “highways” for “systems, the primary and secondary, as well as their extension in urban areas, and the Interstate system,” was executed by making the substitution for the quoted words which in the original contained the word “extensions” rather than “extension”, to reflect the probable intent of Congress.

1987—Subsec. (a). Pub. L. 100-17 substituted “March 3, 1931” for “August 30, 1935” and “276a” for “267a”.

1983—Subsec. (a). Pub. L. 97-424 struck out “initial” after “subcontractors on the”.

1968—Subsec. (a). Pub. L. 90-495 extended wage rate provisions to the construction of all Federal-aid highway projects by amending provisions limiting them only to the Interstate System.

Subsec. (b). Pub. L. 90-495 substituted “any of the Federal-aid systems” for “the Interstate System”.

Subsec. (c). Pub. L. 90-495 added subsec. (c).

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-495 effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as a note under section 101 of this title.

### § 114. Construction

(a) CONSTRUCTION WORK IN GENERAL.—The construction of any highways or portions of highways located on a Federal-aid system shall be undertaken by the respective State highway departments or under their direct supervision. Except as provided in section 117 of this title, such construction shall be subject to the inspection and approval of the Secretary. The construction work and labor in each State shall be performed under the direct supervision of the State highway department and in accordance with the laws of that State and applicable Federal laws. Construction may be begun as soon as funds are available for expenditure pursuant to subsection (a) of section 118 of this title. After July 1, 1973, the State highway department shall not erect on any project where actual construction is in progress and visible to highway users any informational signs other than official traffic control devices conforming with standards developed by the Secretary of Transportation.

(b) CONVICT LABOR AND CONVICT PRODUCED MATERIALS.—

(1) LIMITATION ON CONVICT LABOR.—Convict labor shall not be used in construction of highways or portions of highways located on a Fed-

eral-aid system unless it is labor performed by convicts who are on parole, supervised release, or probation.

(2) **LIMITATION ON CONVICT PRODUCED MATERIALS.**—Materials produced after July 1, 1991, by convict labor may only be used in such construction—

(A) if such materials are produced by convicts who are on parole, supervised release, or probation from a prison; or

(B) if such materials are produced by convicts in a qualified prison facility and the amount of such materials produced in such facility for use in such construction during any 12-month period does not exceed the amount of such materials produced in such facility for use in such construction during the 12-month period ending July 1, 1987.

(3) **QUALIFIED PRISON FACILITY DEFINED.**—As used in this subsection, “qualified prison facility” means any prison facility in which convicts, during the 12-month period ending July 1, 1987, produced materials for use in construction of highways or portions of highways located on a Federal-aid system.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 896; Pub. L. 86-657, § 8(f), July 14, 1960, 74 Stat. 525; Pub. L. 93-87, title I, § 115, Aug. 13, 1973, 87 Stat. 258; Pub. L. 97-424, title I, § 148, Jan. 6, 1983, 96 Stat. 2131; Pub. L. 98-473, title II, § 226, Oct. 12, 1984, 98 Stat. 2030; Pub. L. 100-17, title I, § 112(a), (b)(1), Apr. 2, 1987, 101 Stat. 148; Pub. L. 102-240, title I, § 1019, Dec. 18, 1991, 105 Stat. 1948.)

#### AMENDMENTS

1991—Subsec. (b)(2). Pub. L. 102-240, inserted “after July 1, 1991,” after “Materials produced” in introductory provisions.

1987—Subsec. (a). Pub. L. 100-17, § 112(b)(1), inserted heading.

Subsec. (b). Pub. L. 100-17, § 112(b)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “Convict labor or materials produced by convict labor shall not be used in such construction unless it is labor performed by convicts who are on parole or probation.”

1984—Subsec. (b). Pub. L. 98-473 which directed the insertion of “, supervised release,” after “parole” effective Nov. 1, 1987, was not executed, because of intervening general amendment of subsec. (b) by Pub. L. 100-17, § 112(a), which contained “, supervised release,” after “parole” wherever appearing.

1983—Subsec. (b). Pub. L. 97-424 inserted “or materials produced by convict labor” after “Convict labor”.

1973—Subsec. (a). Pub. L. 93-87 amended last sentence generally. Prior to amendment, last sentence read as follows: “On any project where actual construction is in progress and visible to highway users, the State highway department shall erect such informational sign or signs as prescribed by the Secretary, identifying the project and the respective amounts contributed therefor by the State and Federal Governments.”

1960—Subsec. (a). Pub. L. 86-657 required State highway departments to erect, on any project where actual construction is in progress and visible to highway users, such informational sign or signs as prescribed by the Secretary, identifying the project and the respective contributions therefor by the State and Federal Governments.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds appropriated to be appropriated or made available after Sept. 30, 1991, and, with certain

exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this amendment, see section 235(a)(1) of Pub. L. 98-473, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

#### MATERIALS PRODUCED BY CONVICT LABOR

Pub. L. 101-162, title II, § 202, Nov. 21, 1989, 103 Stat. 1002, provided that: “During fiscal year 1990 and hereafter, materials produced by convict labor may be used in the construction of any highways or portion of highways located on Federal-aid systems, as described in section 103 of title 23, United States Code.”

Similar fiscal year provisions were contained in the following appropriation acts:

Pub. L. 100-459, title II, § 202, Oct. 1, 1988, 102 Stat. 2199.

Pub. L. 100-202, § 101(a) [title II, § 202], Dec. 22, 1987, 101 Stat. 1329, 1329-15.

Pub. L. 99-500, § 101(b) [title II, § 202], Oct. 18, 1986, 100 Stat. 1783-39, 1783-51, and Pub. L. 99-591, § 101(b) [title II, § 202], Oct. 30, 1986, 100 Stat. 3341-39, 3341-51.

Pub. L. 99-180, title II, § 202, Dec. 13, 1985, 99 Stat. 1146.

Pub. L. 98-411, title II, § 202, Aug. 30, 1984, 98 Stat. 1558, repealed by Pub. L. 100-17, title I, § 112(b)(2), Apr. 2, 1987, 101 Stat. 149.

Pub. L. 98-166, title II, § 202, Nov. 28, 1983, 97 Stat. 1085.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 121 of this title.

### § 115. Advance construction

(a) **SUBSTITUTE, CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT, SURFACE TRANSPORTATION, BRIDGE, PLANNING, AND RESEARCH PROJECTS.**—

(1) **GENERAL RULE.**—Subject to paragraph (2), when a State—

(A)(i) has obligated all funds apportioned or allocated to it under section 103(e)(4)(H), 104(b)(2), 104(b)(3), 104(f), 144, or 307 of this title, or

(ii) has used or demonstrates that it will use all obligation authority allocated to it for Federal-aid highways and highway safety construction, and

(B) proceeds with a project funded under such an apportionment or allocation without the aid of Federal funds in accordance with all procedures and all requirements applicable to such a project, except insofar as such procedures and requirements limit the State to implementation of projects with the aid of Federal funds previously apportioned or allocated to it or limit a State to implementation of a project with obligation authority previously allocated to it for Federal-aid highways and highway safety construction,

the Secretary, upon approval of an application of the State, is authorized to pay to the State the Federal share of the cost of the project when additional funds are apportioned or allocated to the State under such section or when additional obligation authority is allocated to it.

(2) **PLANS, SPECIFICATIONS, AND APPLICABLE STANDARDS.**—The Secretary may only make payments to a State with respect to a project if—